

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

YOUNG AMERICA’S FOUNDATION;  
BINGHAMTON UNIVERSITY COLLEGE  
REPUBLICANS; and JON LIZAK, President  
of the College Republicans of Binghamton  
University,

Plaintiffs,

v.

HARVEY STENGER, President of SUNY-  
Binghamton, in his official and individual  
capacities; BRIAN ROSE, Vice President for  
Student Affairs of SUNY Binghamton, in his  
official and individual capacities; JOHN  
PELLETIER, Chief of SUNY-Binghamton UPD,  
in his official and individual capacities;  
COLLEGE PROGRESSIVES, a student  
organization at SUNY-Binghamton;  
PROGRESSIVE LEADERS OF TOMORROW  
(“PLOT”); STUDENT ASSOCIATION OF  
BINGHAMTON UNIVERSITY,

Defendants.

Civil Action No. 3:20-CV-822 (LEK/ML)

**MOTION FOR LEAVE TO PROCEED AS NON-PARTY, OR,  
IN THE ALTERNATIVE, AS AMICUS CURIAE**

Non-party Aviva Friedman hereby moves this Court for an order authorizing her to proceed in this action as a non-party or as an amicus curiae, and, in support, states as follows:

1. On July 22, 2020, Plaintiffs Young America’s Foundation, Binghamton University College Republicans, and Jon Lizak (“Plaintiffs”) filed the Complaint in this action, naming as a defendant, among others, Progressive Leaders of Tomorrow (“PLOT”). ECF No. 1, at 1. The 75-page Complaint nowhere mentions non-party Aviva Friedman. Plaintiffs attempted to serve Defendant PLOT at an address affiliated with non-party Aviva Friedman. ECF No.

59, at 3-4. On this basis, Plaintiffs have now moved for a declaration of effective service on Defendant PLOT. ECF No. 59 (the “Motion”).

2. Although Aviva Friedman is not named as a defendant in the Complaint in this action, and is not a representative or agent of PLOT, and therefore cannot accept service on PLOT’s behalf, out of an abundance of caution, Aviva Friedman sent a letter motion to this Court and to Plaintiffs’s attorneys, alerting them to this discrepancy. ECF No. 55.
3. Plaintiffs nonetheless filed their Motion, ECF No. 59, with this Court on March 16, 2021. As their Complaint makes clear, PLOT is a “collective of advocates” and not a student group. ECF No. 1 at 9. As Plaintiffs concede, it is an unincorporated entity. ECF No. 59 at 6. It cannot properly be named as a defendant to a lawsuit, and certainly not this lawsuit, which attempts to attribute constitutional violations to PLOT, a non-state actor.
4. WHEREFORE, Aviva Friedman respectfully requests an order from the Court authorizing her to proceed in this action as a non-party (or, in the alternative, as an amicus curiae) and to file the attached Memorandum opposing Plaintiffs’ Motion on the grounds that:
  - a. PLOT lacks capacity to be sued under Federal Rule of Civil Procedure 17(b), based on Plaintiffs’ own submissions; and
  - b. By causing the Complaint to be served on Aviva Friedman and Masai Andrews, Plaintiffs have in any event failed to properly serve PLOT under Federal Rule of Civil Procedure 4.

As the attached Memorandum notes, on the record before the Court, it would be appropriate to dismiss PLOT as a defendant.

Respectfully submitted, this 30<sup>th</sup> day of April, 2021.

s/ Rebecca Chapman  
Rebecca Chapman

The Civil Liberties Defense Center  
1430 Willamette St. #359  
Eugene, Oregon 97401  
Phone: 541.687.9180  
rchapman@cldc.org

*Attorney for non-party* Aviva Friedman

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record in this action via the Court's CM/ECF system, this 30<sup>th</sup> day of April 2021.

/s/ Rebecca Chapman  
Rebecca Chapman